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No. 90-880

Supreme Court, U.S.

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In The

Supreme Court of the United States

October Term, 1990

SNAP-ON TOOLS CORPORATION, KENNETH BALDWIN
and KEITH A. KAISER,

Petitioners,

vs.

JAMES F. BOYER and MARY R. BOYER,

Respondents.

*On Petition for Writ of Certiorari to the United States Court
of Appeals for the Third Circuit*

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

HARRY W. REED, JR.

Counsel of Record

BUZGON, DAVIS, REED,

CHARLES & HUBER, LTD.

Attorneys for Respondents

525 South Eighth Street

P.O. Box 49

Lebanon, Pennsylvania 17042

(717) 274-1421

11573

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QUESTIONS PRESENTED

1. Whether there is any special or important reason warranting review where the Court of Appeals held that a factual decision as to the validity of a contested release went to the merits of an action and should not have been considered in determining the existence of federal diversity jurisdiction?

The Respondents respectfully answer and argue "No".

2. Whether a federal court has diversity jurisdiction, premised upon a claim of fraudulent joinder of non-diverse-defendants, to decide defendants' summary judgment motion where both the in-state and the out-of-state defendants assert their merits defense and the fraudulent joinder claim based upon the same contested release?

The Respondents respectfully answer and argue "No".

TABLE OF CONTENTS

	<i>Page</i>
Questions Presented	i
Table of Contents	ii
Opinions Below	2
Jurisdiction	2
Statement of the Case	2
Reasons For Denying the Writ	6
 Argument:	
I. A factual decision as to the validity of a contested release goes to the merits of an action and should not be considered in determining the existence of federal diversity jurisdiction	6
II. The federal court does not have diversity jurisdiction, premised upon a claim of fraudulent joinder of non-diverse defendants, to decide defendants' summary judgment motion where both the in-state and the out-of-state Defendants assert their merits defense and the fraudulent joinder claim based upon the same contested release	11
Conclusion	13

Contents

Page

TABLE OF CITATIONS

Cases Cited:

B., Inc. v. Miller Brewing Co., Inc., 663 F.2d 545, 550 (5th Cir. 1981)	7
Chesapeake & Ohio Ry. v. Cockrell, 232 U.S. 146, 58 L.Ed. 544 (1914)	8, 12
Keating v. Schell Chemical Co., 610 F.2d 328 (5th Cir. 1980)	10
Steel Valley Authority v. Union Switch & Signal Div., 809 F.2d 1006, 1010 (3d Cir. 1987)	10

Rule Cited:

S. Ct. R. 10.1	7
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Respondents, James F. Boyer and Mary R. Boyer, respectfully
request that the Court deny the Petition for Writ of Certiorari.

OPINIONS BELOW

The September 5, 1990 opinion of the United States Court of Appeals for the Third Circuit is reported at 913 F.2d 108 (3d Cir. 1990), and is reprinted in the Appendix attached to the Petition (App. 1a-11a). The May 16, 1989 Memorandum and Order of the United States District Court for the Middle District of Pennsylvania denying Respondent's Motion to Remand and for Attorney's Fees and Costs is reprinted in the Appendix (App. 22a-23a), as is the District Court's February 14, 1990 decision granting Petitioner's Summary Judgment Motion (App. 12a-21a). The two District Court decisions by the Honorable Sylvia H. Rambo have not been reported.

JURISDICTION

The jurisdiction of the District Court, which was invoked in the removal petition, was asserted under 28 U.S.C. § 1332 (1983), with an assertion of diversity of citizenship of Respondents and the Defendant corporation and allegations of fraudulent joinder of the non-diverse two individual Defendants. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1254(1) (1983).

STATEMENT OF THE CASE

This lawsuit involves a state action by a former dealer and his wife (hereinafter "the Boyers") against a large, Fortune 500 Company, Respondent, Snap-On Tools Corporation (hereinafter "Snap-On"). Snap-On sells automotive hand tools to a nationwide network of dealers who resell the tools to auto mechanics. Respondent, James F. Boyer (hereinafter "dealer"), had been a United States Army National Guard helicopter mechanic/inspector when he was recruited as a Snap-On dealer. The suit centers around allegations of fraud and negligent

misrepresentation against Snap-On and its two management employees, Petitioners, Kenneth Baldwin (hereinafter "branch manager"), and Keith A. Kaiser (hereinafter "field manager").

The Boyers filed a 47-page fact pleading Complaint alleging five broad aspects of their fraud and misrepresentations claims. First, the Boyers contend that Snap-On, through its written representations and through the oral statements of field manager, misrepresented the profitability of the dealership and the risk of failure, during the period of time leading up to the signing of the dealership agreement. Second, dealer and his wife assert that the Petitioners fraudulently misrepresented the number of customers in dealer's territory in an inflated survey of potential tool users. Third, both Kaiser and Baldwin misrepresented the amount of initial capital needed to begin a dealership. Throughout the operations phase of the dealership, Snap-On pressured dealer to borrow more capital to fund his ongoing purchases of tools from Snap-On. Because the dealership was undercapitalized, dealer's business venture was bound to fail.

Fourth, dealer alleges that during the operation of his dealership, Snap-On engaged in a fraudulent scheme through its "promotional tools program", which involved weekly mandatory shipments of tools selected by Snap-On. Initially represented to be \$200-\$300 weekly, these shipments increased to \$1,112 per week. Because Boyer could not fulfill the requirements of the program, he was penalized by being barred from placing orders with his customers during 56 weeks of his dealership. Fifth, dealer alleges that the wrongful termination of his dealership was a part of the overall fraudulent scheme of Snap-On. In addition to the fraud and misrepresentation allegations, the Complaint sets forth breach of contract and warranties actions against Snap-On. Because it is easy to recruit new dealers from the ranks of its auto mechanic customers through enticements of large incomes, Snap-On never loses any money. According to the Boyers, a new cycle of

borrowing starts with the next dealer and Snap-On's profits just keep on increasing.

The Complaint was originally filed on December 13, 1988, in the Court of Common Pleas of Lebanon County, Pennsylvania. Snap-On and its supervisors filed a Petition for Removal based upon diversity jurisdiction. The Boyers were both residents of Pennsylvania. Snap-On is a Delaware corporation with its principal place of business located in Wisconsin. Petitioners' Answer to the Complaint admits that the field manager and the branch manager were Pennsylvania residents. The Removal Petition, however, asserted that these two employees were fraudulently joined into the state action for the sole purpose of avoiding and defeating the removal of the suit to the federal courts. The "fraudulent joinder" claim by Snap-On and its employees was based on allegations that the non-diverse employee supervisors had a valid defense of release, did not personally benefit from the fraud and misrepresentations and merely acted in the interests of their employer and the Complaint failed to state a claim against the in-state Defendants.

The Boyers filed a Motion for Remand and Motion for Attorney's Fees and Costs. On May 16, 1989, the District Court denied the Motion for Remand and held:

"This Court has reviewed the entire record and is of the opinion the in-state Defendants would prevail in a motion for summary judgment for failure to state a cause of action by reason of the release in the termination agreement. . . . Because the release is likely to be dispositive of Plaintiffs' claims against Baldwin and Kaiser, the denial of Plaintiffs' motion to remand is required." (App.23a).

Thereafter, the Defendants conducted extensive discovery and finally filed a Motion for Summary Judgment on the basis that dealer had signed a termination agreement containing a general release clause. The Boyers vigorously opposed this Motion for Summary Judgment on the basis that: undisclosed fraud vitiated the release; fraud in the inducement was used to procure the release; violation of a fiduciary duty to disclose; economic duress was used to procure the release; and the right of dealer's wife to maintain her independent action against the three Defendants.

Dealer had participated in a two-day inventory and turn-in of his tools at the Snap-On Branch office in Harrisburg on February 11 and 12, 1988. Branch manager presented dealer with a termination agreement that included a release clause, which stated that, "both parties to this Agreement freely waive any and all claims they may have against each other arising out of the Dealership terminated by this Agreement." Dealer testified in his deposition that he was told on the day of the inventory turn-in by his then field manager, Michael Brown, that if he did not sign the agreement containing the release, Snap-On would not pay him for his tools and would withhold the other funds owing to him. Brown repeated this statement on the second day of the tool turn-in. According to branch manager's deposition testimony, this representation was not true. Dealer signed the agreement based on Brown's misrepresentations because he believed that he would otherwise lose his home and car.

The Boyers testified in their depositions that at the time dealer signed the release, they were unaware of the alleged fraudulent practices of Snap-On. They first learned of Snap-On's fraud in July 1988, when they saw an NBC television news story and a Forbes magazine article detailing Snap-On's practices. The Boyers also maintain that dealer's wife has an independent action against the three Defendants and she never signed the termination agreement containing the release clause.

On February 14, 1990, the District Court issued a Memorandum Opinion and Order granting the Defendants' Motion for Summary Judgment. The decision was based upon the District Court's determination that the release contained in the termination agreement was valid as to the three Defendants. Rejecting the Boyers' arguments concerning the release, the District Court held:

"The party seeking to have the release declared invalid because of fraud had the burden of proving that fraud. The evidence must be clear, concise and convincing Based on the evidence before it, taking it in the light most favorable to Plaintiffs, the Court finds that Plaintiffs have not established a level of proof sufficient to establish fraud."
(App. 16a-18a).

The Boyers appealed the adverse Summary Judgment to the Third Circuit Court of Appeals. On September 5, 1990, the unanimous panel of the Court of Appeals for the Third Circuit reversed and remanded to the District Court with directions to remand this case to the state court (App. 11a).

REASONS FOR DENYING THE WRIT

I.

A FACTUAL DECISION AS TO THE VALIDITY OF A CONTESTED RELEASE GOES TO THE MERITS OF AN ACTION AND SHOULD NOT BE CONSIDERED IN DETERMINING THE EXISTENCE OF FEDERAL DIVERSITY JURISDICTION.

Petitioners' arguments for granting the Writ are that the Third Circuit's decision conflicts with the law in other circuits, is based

upon misinterpretation of a Supreme Court decision, and impairs proper diversity jurisdiction. None of these arguments, nor the authority advanced by Petitioners in support therefor, constitute the "special and important reasons" warranting review of this case. S. Ct. R. 10.1.

The issues of whether a federal court has diversity jurisdiction over an action and whether the Plaintiffs will ultimately prevail are separate and distinct questions. A court may not decide the merits of the case in the guise of deciding jurisdiction. As the Fifth Circuit held in *B., Inc. v. Miller Brewing Co., Inc.*, 663 F.2d 545, 550 (5th Cir. 1981), the "jurisdictional inquiry must not subsume substantive determinations."

In its decision, the Third Circuit used two approaches to analyze the jurisdictional issues in this case. In its initial approach, after reviewing the history of federal diversity jurisdiction and its limitations as defined by the Constitution and statutes, the Court made a three-step sequential analysis of the fraudulent joinder claim in the Boyers' case. First, the Circuit Court examined whether there was any "outright fraud" involving jurisdictional averments. Second, a review of the pleadings was conducted and Pennsylvania law was considered to determine whether the Boyers' cause of action was defective as a matter of law. The third step in this first approach was to scrutinize the District Court's efforts to pierce the pleadings concerning the fraudulent joinder issues raised by the defense. It was in this third step of the analysis that the Third Circuit Court found that the District Court's Summary Judgment inquiry exceeded the permissible "piercing of the pleadings" type of inquiry appropriate to decide the jurisdictional issue of whether Plaintiffs have asserted a "colorable ground supporting the claim against the joined in-state Defendants." (App. 9a).

The second analytical approach by the Third Circuit was to

consider your Honorable Court's decision in *Chesapeake & Ohio Ry. v. Cockrell*, 232 U.S. 146, 58 L.Ed. 544 (1914). *Cockrell* and the Boyers' case both involve situations where fraudulent joinder is being asserted on the basis that the non-diverse defendants have a meritorious defense, which applies equally to the diverse defendant. The Third Circuit found that the District Court, in the guise of deciding whether joinder was fraudulent, stepped from the threshold jurisdictional issue into a decision on the merits (App. 10a). Following *Cockrell*, the Third Circuit held:

" . . . [T]hat where there are colorable claims or defenses asserted against or by diverse and non-diverse defendants alike, the court may not find that the non-diverse parties were fraudulently joined based on its view of the merits of those claims or defenses. Instead, that is a merits determination which must be made by the state court." (App. 11a).

The first analytical approach employed by the Third Circuit has been used by Circuit Courts throughout the nation. It is interesting to note that Petitioners' claim that the Third Circuit's opinion conflicts with the law in other circuits and, in support of this contention, cite cases from the Fourth, Fifth, Ninth, Tenth and Eleventh Circuits (see page 5 of the Petition). In its three-step sequential analysis of the limitations on a District Court's inquiry into jurisdiction in fraudulent joinder claims, the Third Circuit utilizes and specifically cites cases from the Fifth, Tenth and Eleventh Circuits (App. 7a-9a) and quotes the black-letter law on fraudulent joinder from Moore's Federal Practice (App. 8a).

In their Petition, Snap-On and its supervisory employees assert that the Third Circuit offered "three justifications" for its holding and that the first two justifications were inconsistent with well-

established law in other federal circuits concerning fraudulent joinder of non-diverse Defendants. (See page 4 of the Petition). This assertion mis-characterizes the Third Circuit's Opinion by dissecting the sequential analysis of the first approach and asserting that the Third Circuit held that each stage of the inquiry was a separate and independent "justification" for its ruling and was "dispositive" of the case. It is through this mis-characterization that Petitioners assert a conflict with the law in other circuits. Instead, what the Third Circuit accomplished by its three-step sequential analysis of a fraudulent joinder claim was to provide trial courts with a logical method to deal with claims of fraudulent joinder.

Contrary to the statements in the Petition, the Third Circuit's Opinion did not hold that the absence of actual fraud in the jurisdictional pleadings of a case was dispositive. Nor did the Opinion hold that a district court is limited to the face of the pleadings in determining whether a Plaintiff's claim is defective as a matter of law. The Third Circuit's first analytical approach merely sets forth these two areas as the first two stages in any logical analysis of a fraudulent joinder claim. Because the Third Circuit never held that these tests were "dispositive", there can be no conflict with decisions in the other circuits on this basis.

The Third Circuit's Opinion recognized that the third step in analyzing a fraudulent joinder claim, namely, the "limited piercing" of the pleadings to discover fraudulent joinder, is the portion of the analysis requiring particular care to insure that diversity jurisdiction requirements are not violated. The Third Circuit specifically found that the District Court's summary judgment determination that the Snap-On release was valid "stepped from the threshold jurisdictional issue into a decision on the merits" (App. 10a).

The Third Circuit's decision did not tackle the tricky issue

of how to delineate the boundaries between the permissible "limited piercing" type of inquiry for jurisdictional purposes and the full scale merits determination prohibited by the Constitution and the statutes regulating diversity jurisdiction. Although it decided that the District Court had stepped over this line, the Court recognized that it did not need to define this boundary in the Boyers' case. The establishment of this boundary line was not necessary because the dispositive fact in the case was that both the diverse and non-diverse Defendants were claiming the same merits defense upon which the fraudulent joinder was based, i.e., the release. *Cockrell* alleviated the necessity for the Third Circuit to delineate the boundaries between the two types of inquiries.

In the Boyers' case there is another basis for reversal, involving the burden of proof in jurisdictional determinations, which was not discussed by the Third Circuit in its opinion. In the Boyers' case the District Court was asked to address the lack of diversity jurisdiction in the Plaintiffs' Motion for Remand and by the Boyers' opposition to the Defendants' Summary Judgment Motion. On both occasions, the District Court found that the release was a defense as to the claims against the non-diverse field manager and branch manager. Thus, the District Court took the "cart before the horse" and decided the case on the merits, where it had no jurisdiction. The burden of proof is properly placed upon those who cry "fraudulent joinder" and it is a heavy one. In order to establish that an in-state defendant has been fraudulently joined, the removing party must show either that there is no possibility that the plaintiff would be able to establish a cause of action against the in-state defendant in state court or that there has been outright fraud in the Plaintiffs' pleading of jurisdictional facts. *Keating v. Schell Chemical Co.*, 610 F.2d 328 (5th Cir. 1980); and *Steel Valley Authority v. Union Switch & Signal Div.*, 809 F.2d 1006, 1010 (3d Cir. 1987).

In the instant case, the District Court applied exactly the opposite burden of proof. The Court held:.

“The party seeking to have the release declared invalid because of fraud has the burden of proving the fraud. The evidence must be clear, precise and convincing.” (App. 16a)

Thus, by taking the “cart before the horse” and judging the case on the merits before addressing the jurisdictional issue, the District Court not only reversed the burden of proof from Defendants to Plaintiffs, but also increased the standard of proof. Because of the District Court’s error, the burden of proof was switched from the Defendants being required to show “no possibility” of the existence of a cause of action, to the Boyers being required to prove by “clear, precise and convincing evidence that they had a case on the merits. This reversal of the burden of proof and the heightened level of proof in jurisdictional determinations is clear error, which supplies another basis requiring the Third Circuit’s reversal of the granting of summary judgment in favor of the Defendants.

II.

THE FEDERAL COURT DOES NOT HAVE DIVERSITY JURISDICTION, PREMISED UPON A CLAIM OF FRAUDULENT JOINDER OF NON-DIVERSE DEFENDANTS, TO DECIDE DEFENDANTS’ SUMMARY JUDGMENT MOTION WHERE BOTH THE IN-STATE AND THE OUT-OF-STATE DEFENDANTS ASSERT THEIR MERITS DEFENSE AND THE FRAUDULENT JOINDER CLAIM BASED UPON THE SAME CONTESTED RELEASE.

The second analytical approach employed by the Third Circuit involves an exercise in deductive reasoning. It is axiomatic that

in order for the federal courts to have jurisdiction over a state action between dealer, dealer's wife, Snap-On and its supervisory employees, there must be a lawsuit between diverse parties. Snap-On must prove that the release is *valid* as to the individual Defendants, but *invalid* as to Snap-On itself, thereby creating a diversity action between the dealer and Snap-On. However, in the Boyers' situation, Snap-On does not make such a claim of *partial* validity of the release. Rather, it simply argues that the release is entirely valid, which is an argument on the merits and not an argument as to the validity of the joinder of the non-diverse supervisory employees. Under Snap-On's reasoning, the release is either valid as to all Defendants or valid as to none. Therefore, at no point in time is there a suit between diverse parties and federal diversity jurisdiction cannot be invoked.

A strikingly similar issue was resolved in *Chesapeake & Oregon R.R. v. Cockrell*, *supra*. In *Cockrell*, a Kentucky citizen sued a Virginia railroad company and its Kentucky engineer and fireman for negligently causing the death of Plaintiff's decedent. Defendants removed on the ground that the charges of negligence against the employees were fraudulently made. The Court refused to find the individuals fraudulently joined because the individual Defendants' defense, if valid, defeated the *entire* lawsuit. Your Honorable Court held:

"As no negligent act or omission personal to the railroad company was charged, and its liability was . . . predicated upon the alleged negligence [of the employees], the showing manifestly went to the merits of the action as an entirety, and not to the joinder; that is to say it indicated that the plaintiff's claim was ill-founded as to all the Defendants." *Id.* at 153.

Following its analysis of *Cockrell*, the Third Circuit correctly

held that there were colorable claims asserted against both the diverse and non-diverse Defendants alike and that the non-diverse parties could not have been fraudulently joined, no matter how the federal court viewed the merits of their defenses. That merits determination could only be made by the state court.

CONCLUSION

For the reasons set forth above, Respondents respectfully request that this Honorable Court deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

HARRY, W. REED, JR.,
Counsel of Record
BUZGON, DAVIS, REED,
CHARLES & HUBER, LTD.
Attorneys for Respondents

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